



A Supervisor's Guide to Proactive Labor Relations in the Public Sector

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For the Town of Darien

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This *Guide* has been developed to assist managers and supervisors in matters related to labor relations in the public sector. It may be used as a resource when issues or problems arise in the area of employee conduct and discipline. This *Guide* should be used in conjunction with the publication *A Supervisor's Guide to Effective Performance Evaluations*. Permission to reference is granted if credit is maintained.

ACKNOWLEDGEMENT

This *Guide* has been developed to assist managers and supervisors in handling personnel matters. It is hoped that supervisors will refer to this *Guide* and use it as a resource when issues or problems arise in the area of labor relations and performance evaluations.

In the event of any conflict between the provisions of this *Guide* and those contained in any applicable collective bargaining agreement, the collective bargaining agreement will govern in all cases with respect to employees covered by the agreement.

This *Guide* is for training purposes only and does not constitute a contract. It is designed solely as a source of information and resource for supervisors and managers. This *Guide* should be used in conjunction with federal and state laws, rules and regulations, local policies and procedures, and the applicable collective bargaining agreement.

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INTRODUCTION

Supervisors are entrusted with ensuring that employees assigned to their team are working effectively and efficiently. Supervisors are called upon to provide direction and guidance which may come in the form of employee development, training, identification of performance standards, and, when necessary, proper discipline. Proper discipline is the result of enlightened leadership and must be exercised within the framework of a clear and consistent policy. When coaching or instruction is offered, and problems are recognized and resolved early, the need for disciplinary action can be reduced or eliminated. Supervisors should instruct employees in a manner which provides them with an opportunity to meet established job performance standards and conform to the rules of conduct in effect.

The effective handling of disciplinary matters requires good judgment, common sense, and conformance with the employer's policies and procedures. Disciplinary action should be formulated within the context of federal and state rules and regulations, collective bargaining agreements, and/or policies and procedures.

The primary purpose of discipline is corrective, not punitive. Progressive discipline consists of increasingly rigorous measures taken by Supervisors and management to either prevent performance problems, correct the work behavior of individual employees, or to take adverse action when an employee does not correct, improve, or refrain from certain work habits. It is important that Supervisors administer such discipline in a fair and equitable manner.

Prior to imposing discipline, supervisors must show that they have identified and documented performance problems, discussed them with the employee, and provided training or other opportunities to improve performance. Supervisors must accept responsibility for keeping employees informed on an ongoing basis as to their performance.

Supervisors are expected to objectively evaluate employees through the performance evaluation process. All too often, supervisors issue good performance ratings to employees with substandard performance because they either want to avoid confrontation or do not want to hurt the employee's chances for promotion. This practice makes it very difficult to take corrective action when the employee's pattern of poor performance can no longer be tolerated. To prevent this from occurring, Supervisors must make sure that all performance, both positive and negative, is recorded and recognized as it arises. Remember, any disciplinary action is to be preceded by an investigation of the facts associated with the problem. Supervisors are authorized to conduct informal and formal counseling. Informal and formal counseling, as well as discipline, are to be conducted in private between the supervisor, employee, and union representative as appropriate.

Both before and after corrective action has been taken, supervisors are responsible for assisting employees with improving their performance and/or behavior through the use of remedial training and development and ongoing informal coaching. If available to employees, the Employee Assistance Program (EAP) should be offered when there is an indication that personal problems may be affecting an employee's performance and/or behavior.

Line employees as well as supervisors are responsible for reporting misconduct. Failure to report an incident could subject an employee or supervisor to disciplinary action. This principle holds true with regard to an employee's overall job performance. Proper supervision requires that supervisors review their employees' work and complete performance evaluations in accordance with established guidelines and/or collective bargaining agreements.

In essence, the objective of each supervisor should be to maximize the efficiency and effectiveness of the work group. To accomplish this goal, supervisors should lead by example. The supervisor's attitude toward his/her work and the employee's will be reflected in the staff's work habits. Address employee job performance issues, utilizing all the principles of progressive management and corrective discipline. Failure to take these steps will only result in increased grievance activity, morale problems, and an unproductive work environment.

The information that follows is a roadmap to the most common types of issues associated with labor/employee relations. This *Guide* does not identify the level of supervision authorized to take specific measures. All formal discipline must receive advance approval by the appropriate authority.

WHAT DO WE MEAN BY PROACTIVE LABOR RELATIONS?

Merriam-Webster defines labor relations as “relations between management and labor especially as involved in collective bargaining and maintenance of contracts.” Therefore, “proactive labor relations” is defined as the use of positive strategies and approaches to address management- and employee- related issues, including those associated with discipline and job performance, particularly in a unionized environment.

Being proactive is about strong leadership, team building, and conflict management. It is about having a strong performance evaluation and competency building system in place for your employees. It is about leveraging the principles of progressive discipline and due process. It is about being creative and finding “win-win” solutions so as to avoid costly grievances and litigation. It is about supervisors and subordinates working together in a collegial way. It is about getting problems out in the open and resolving them at their lowest possible level. It is about knowing your work force, and being attuned to the culture of your organization. It is about leading by example; in other words, walking the walk, not just talking the talk. It is about creating an environment of dignity and mutual respect. It is about valuing your employees and being invested in their success. It is about being fair and impartial. It is about anticipating any potential conflicts, and assessing the consequences of taking or not taking a particular action.

Stephen R. Covey in his book *The 7 Habits of Highly Effective People: Powerful Lessons in Personal Change* stresses the importance of identifying and sharing your core values. In my view, he is right on point. Employees need to know your values and expectations, and be held accountable for their actions. At the same time, leaders should be aware of and respect the values and expectations of their employees.

Being proactive is about doing the right thing for the right reasons. It is about not getting caught up in personal agendas; rather, it is about trying to do what is best for the organization. It is about investing in each individual’s success, and helping your employees attain their professional goals. It is about avoiding “stinking thinking” and adopting a “can-do attitude.”

Labor relations in general and proactive labor relations in particular, are more of an art than a science. It requires thinking creatively and developing solutions that are going to meet, or attempt to meet, the needs of the specific parties involved as well as the organization as a whole. The sad truth is that you can be right 100% of the time on 100% of the issues, but if the parties with whom you are dealing do not believe or trust you, then you are not going to be effective or able to achieve the desired results.

Ultimately, proactive labor relations is about establishing credibility, and building and sustaining positive relationships with your employees, your Union representatives, and stakeholders. A proactive labor relations approach requires vigilance and constant attention to your changing workforce and organizational dynamics. Unless you continually assess what is going on in your own environment, problems can arise and the good work that you have done can be compromised.

It is within this context that we will now explore and provide a basis for operationalizing the concepts associated with proactive labor relations.

I. GENERAL PRINCIPLES

1. Reasonable standards of work performance must be established and clearly communicated to all employees.
2. Standards of work performance must be consistently maintained, and employee discipline must be uniformly enforced.
3. Disciplinary actions are taken only after a supervisor is reasonably sure that further training and counseling will not be effective.
4. The purpose of discipline is to correct, rather than punish, an employee's behavior.
5. Timing is important. Problems must be dealt with promptly when they arise.
6. Discipline must be administered on the basis of available facts. The employee involved must be permitted to explain his or her actions. Efforts must be made to verify the employee's information and to obtain all pertinent facts.
7. The disciplinary action taken must be related to the immediate offense and the employee's past record including any progressive discipline.
8. The supervisor must carefully document and keep a written record of any corrective action taken.
9. Follow-up activity is essential to make sure that the corrective action has been timely and effective.

If corrective action has been effective, the incident should not be cited again in dealing with the employee involved.

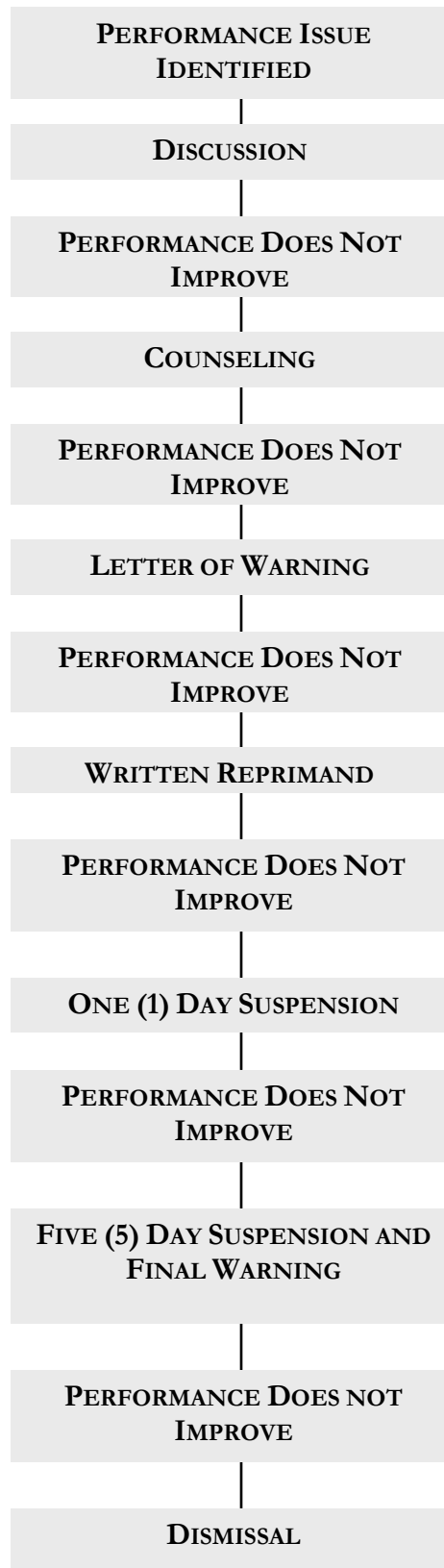
II. REDUCING THE OF NUMBER OF COMPLAINTS

While there is no magic formula for eliminating general complaints employees may have, the following suggestions should help supervisors minimize the number of grievances.

1. Consistently administer and enforce federal and state laws, the provisions of the contract and/or the employer's policy. Pay special attention to those issues that tend to be sensitive, such as the equalization of overtime.
2. Keep workers informed regarding the quality of their work, e.g., monitor employee performance on a regular basis.
3. Correct minor irritations promptly.
4. Encourage constructive suggestions.
5. Honor commitments, and do not make commitments that cannot be honored.
6. Impartially assign work to employees.
7. Give reasons for directions unless they are obvious.
8. Be consistent except when there is a legitimate reason for altering a standard practice.
9. Explain change.
10. Act as soon as possible on requests.
11. Avoid favoritism.
12. Make sure that if there is a reason to criticize or discipline an employee it is done in a manner which does not embarrass the employee or cause a public display.
13. Let employees know what is expected.
14. Train employees.
15. Establish open communications.
16. Set a good example.

In summary, use common sense, treat employees in the same manner as you would wish to be treated, and assume that a progressive and fair approach will result in cooperation from employees.

III. JOB PERFORMANCE EVALUATION FLOWCHART FOR PERFORMANCE ISSUES



IV. JOB PERFORMANCE COUNSELING

Remember the following points when involved in job performance counseling.

1. Control Your Temper

Nothing constructive can be accomplished when you lose your temper. By thinking clearly and acting in a professional manner, you can normally arrive at a positive resolution to a problem.

2. Speak with the Employee in Private

The objective of counseling requires that discussions concerning job performance be conducted in private. Privacy provides a more positive atmosphere for discussing and addressing job performance deficiencies or behavior, and prevents the employee from being embarrassed in the presence of co-workers.

3. Be Sure of the Facts

You should be satisfied that counseling is necessary. Therefore, it is important that you do not rely on gossip, rumors, or hearsay information. You should attempt to discover: What did the employee do wrong? What happened? What were the consequences of the employee's actions? What could the consequences have been? Has the individual committed similar infractions in the past? How long ago?

Having all the facts will help ensure that you are well prepared. Supervisors, who impulsively counsel an employee and then discover the counseling was not warranted, foster an environment of mistrust. You should plan your course of action and assess alternatives before the conference, and make an outline of subjects to be discussed.

In considering the best method of job performance counseling, remember that the proper objective is corrective action; not punishment. When a situation develops that is serious enough to require counseling, you may feel your control is being threatened, your leadership challenged, and your patience strained. Resist the temptation of reacting defensively or punitively. A calm, thoughtful approach will help you maintain control of the situation and move positively toward the goal of correcting the employee's behavior or job performance.

4. Get the Employee's Side of the Story

By listening attentively and courteously to the employee's explanation, you show concern for treating the individual fairly. You may need to verify facts and/or consider mitigating circumstances. This information can influence your approach concerning how you address the area of deficiency to be addressed.

The strength of the counseling session is based on:

- a. The attitudes of the employee and the supervisor
- b. The employee's intent when a rule is broken
- c. The employee's understanding of the rule
- d. The employee's commitment to change on-the-job behavior

It is not possible to gather or properly assess the information without listening to the employee's explanation.

5. Be Firm but Fair-Measure the Employee against Realistic Expectations

You should explain how the employee's performance falls below expectations. Explain why it is unacceptable; how the performance or behavior violates reasonable work rules; and the reasons for your expectations. In order to be fair in counseling, you and the employee should set a performance objective and reasonable timetable for completion.

6. Show Confidence in the Employee's Ability to Learn

The fear of counseling can be diminished by your showing confidence in the employee's ability to alter the unacceptable behavior or increase performance to meet acceptable standards. Showing confidence in the employee is a strong, positive way to conclude the session.

7. Provide Appropriate Training and Guidance

When performance issues arise, you should ensure that the employee is receiving appropriate guidance and training. By using this method, the employee may be able to correct job performance deficiencies. Seminars, in-service courses or other training opportunities may serve to assist the employee in conforming to acceptable standards. Providing these training opportunities also demonstrates a sincere interest and desire in seeing the employee succeed.

8. Follow up

- a. Review the employee's progress before the target date which has been set for completing the performance objective.
- b. If the employee has met the specified objective, recognize the employee's accomplishment.
- c. If the employee fails to meet the objective, take further corrective action in accordance with the employer's policy.

V. JOB PERFORMANCE REVIEW

Discussion

Once the performance issue is identified, the main purpose of the DISCUSSION is to counsel or coach an employee. Frequently, a problem, when recognized early, can be solved through this approach. Privacy and sufficient time to meet are essential. You should make a notation on your calendar (or in a notebook) indicating the date the employee was seen. The employee should be given reasonable opportunity to improve performance. You must then follow up to assess progress in meeting job performance requirements.

Performance Counseling

A PERFORMANCE COUNSELING SESSION is often used when an employee is careless, or does poor work, or commits minor infractions of department rules. Counseling may be used when a DISCUSSION has failed to solve the problem. You should tell the employee, "This is a counseling session."

Make a written record showing the date and circumstances of the COUNSELING SESSION. (See Exhibit 1.) Retain a copy of this record in an administrative file and provide the employee with the original. A union representative/witness need not be present during the COUNSELING SESSION. If the employee requests such representation, you should honor the request.

If an employee reveals information during this (or any other) meeting which could provide a basis for disciplinary action, advise the employee of the right to union representation and immediately suspend the meeting until such representation can be made available.

Points to remember for a DISCUSSION or PERFORMANCE COUNSELING: In any organization, performance issues may arise. When problems exist, corrective action must be taken or employees may begin to perceive that they do not have to obey work rules or meet certain job requirements.

When job performance counseling is necessary, however, it should be done in a skillful manner. Even in situations where an infraction is serious or when negative behavior is repeated, your objective is to correct mistakes without causing undue resentment.

NOTE: If at this or any subsequent stage you believe that a personal problem may be impacting the employee's performance or behavior; referral should be made to the Employee Assistance Program (EAP) as applicable.

Letters of Warning/Direction

LETTERS OF WARNING/DIRECTION, in this context may be used when COUNSELING has not corrected the employee's poor performance. The interview should include the following elements:

1. Presenting an overview of the performance issue;

2. Questioning the employee regarding the behavior/performance issue;
3. Inquiring as to whether the employee was aware or reasonably should have been aware that the issue in question is problematic-refer to prior counseling, etc.; and
4. An opportunity for the employee to explain his/her side of the story.

Upon review, determine whether an LETTER OF WARNING is warranted. If it is then the supervisor should remember the following points when preparing a LETTER OF WARNING:

1. Discuss the rule infraction or inadequacy, including the dates of occurrence and all pertinent facts;
2. Mention all previous efforts to correct the problem and the employee's response to those efforts;
3. Include what improvement is expected from the employee in order to meet acceptable standards;
4. Specify the consequences or actions that may be taken should the employee not meet acceptable standards of job performance in the future;
5. Discuss the matter fully with the employee; and
6. Offer referral to the Employee Assistance Program (EAP) if available and deemed appropriate.

When issuing a LETTER OF WARNING you should note the time and place of the meeting and record the employee's response to the session. The LETTER OF WARNING should be placed in the supervisor's administrative file.

VI. LESS THAN PROFICIENT PERFORMANCE EVALUATIONS

Performance evaluations are not considered discipline and should not be used to correct specific infractions of rules or incidents of misconduct. They are included in this outline because:

1. The dividing line between misconduct and unsatisfactory performance is not always distinct.
2. A “NEEDS IMPROVEMENT” or “UNSATISFACTORY” rating is an indicator that an employee’s behavior or performance must improve to ensure continued employment.

If you have conscientiously pointed out the employee’s areas of weakness and indicated a path of corrective or remedial action, there should be a complete and defensible record leading up to a NEEDS IMPROVEMENT or UNSATISFACTORY rating. Before giving an employee a NEEDS IMPROVEMENT or UNSATISFACTORY performance evaluation, you should be able to answer the following questions in the affirmative:

1. Are the employee’s job functions consistent with the job specification?
2. Have the employer’s performance standards, and other applicable rules, policies and procedures been explained to the employee, e.g., does a written record, such as documentation of a meeting in which these problems were discussed, exist?
3. Have the employee’s weaknesses or deficiencies been discussed with the employee?
4. Has the employee been given adequate training and sufficient opportunity to improve?
5. Is the rating based on careful observation of the employee’s work and been measured against reasonable standards?
6. Does the rating cover a sufficient length of time?
7. Is there evidence that the employee has been:
 - a. Coached or counseled;
 - b. Provided with remedial training or instruction as appropriate;
 - c. Received formal direction;
 - d. Disciplined, such as a written reprimand or suspension during the evaluation period;
 - e. Made aware that discharge may follow progressive efforts to correct any performance deficiencies.

The items enumerated above, if applicable, should be referenced in the performance evaluation. Reference to dates, subject matter, and actions taken must also be included. If more than one

supervisor has supervised the employee during the rating period, both supervisors should participate in the evaluation.

Points to Remember

1. A rating period should never overlap a period of time in which the employee has previously been evaluated.
2. A rating period should begin on the next day following the date of the last rating.
3. A rating period may be as short as 90 days or as long as one (1) years.
4. Confront problems as they arise. Do not wait for the entire rating period to take corrective action.

Less Than Proficient Performance Evaluation

While performance evaluations are not considered discipline per se, prior to issuing a less than proficient overall rating, you should consult with your human resources department and the union should be notified that the employee will be receiving a needs improvement or unsatisfactory evaluation.

The term NEEDS IMPROVEMENT means “below satisfactory or proficient, improvement necessary.” A rating of NEEDS IMPROVEMENT in two (2) or more job categories and no UNSATISFACTORY ratings results in an overall NEEDS IMPROVEMENT performance evaluation. Be sure to reference any incident, examples of poor or unacceptable work, counseling sessions, reprimands, suspensions or other corrective action initiated during the rating period.

Unsatisfactory Performance Evaluation

An UNSATISFACTORY performance evaluation means that the work performance is unacceptable. A rating of UNSATISFACTORY in one job category or NEEDS IMPROVEMENT in two or more job categories may constitute an UNSATISFACTORY performance evaluation. As with a NEEDS IMPROVEMENT rating, reference any incident, examples of poor or unacceptable work, counseling sessions, letters of warning, reprimands, suspensions or other corrective action taken during the rating period.

During an employee’s initial probationary period, an UNSATISFACTORY evaluation results in the termination of employment. If an employee fails a promotional probationary period, the employee is normally returned to his/her previous or comparable position without any loss of benefits or seniority.

VII. PROCEDURES FOR FILING LESS THAN PROFICIENT RATINGS

Each NEEDS IMPROVEMENT or UNSATISFACTORY performance evaluation (original and two copies) must be submitted to the Human Resources Department for review and signature prior to giving the evaluation to the employee. In the case of an employee in an initial or promotional probationary period, the evaluation should normally be filed not less than two weeks prior to the termination of the period. Performance evaluations for permanent employees are required at least two weeks prior to the employee's anniversary date, and at other times as may be deemed appropriate by the employer.

NOTE: Supervisors will be evaluated based on the thoroughness and timely filing of performance evaluations for employees within their unit(s) or department(s).

An employee can be given the completed performance evaluation only after the approving supervisor's signature is affixed. This signifies that the appropriate personnel have reviewed the evaluation. The employee should read and sign the completed evaluation and any attachments. Signatures are affixed to signify that the employee has seen the performance evaluation. If the employee refuses to sign the form, another supervisor or manager must sign as a witness. Add the following statement to the rating:

“This performance evaluation was given to and discussed with the employee who refused to sign it.”

(Witness and Date)

The original must be forwarded through proper reporting channels to Human Resources for inclusion in the employee's personnel file.

VIII. THE “HOT STOVE” APPROACH

In their book, *Personnel: the Human Problems of Management*, George Strauss and Leonard Sayles discuss the “hot stove” approach. In their view, effective, or what is now referred to as progressive, discipline should have the same effect on people as touching a hot stove. That is, the reaction is immediate, foreknown or predictable, consistent, and impersonal.

Immediate

The stove burns you at the time you touch it. Discipline makes more sense, and is more defensible, when it follows soon after the violation of a rule or other undesirable behavior. The more quickly the discipline follows the offense, the more likely it is that the employee will connect the discipline to the act itself rather than the person who is taking the disciplinary action. Resentment of the supervisor is reduced when employees are accustomed to prompt action following a violation.

Foreknown

The stove’s heat provides a warning of danger. The effective supervisor does not wait for an offense to take place and then invoke some unknown rule against the unwitting offender.

Instead, the effective supervisor takes the time to see that employees know the rules and regulations with which they are expected to comply, along with the potential penalty associated with any violation.

Consistent

If you keep touching the hot stove, it will keep burning you. If an employee violates a rule on two or more occasions and is punished only once, or if two employees violate the same rule and only one is punished, the supervisor is open to charges of being arbitrary or having a double standard.

One fundamental result of the consistent application of appropriate discipline is that the line is drawn that establishes the limits of acceptable versus unacceptable behavior.

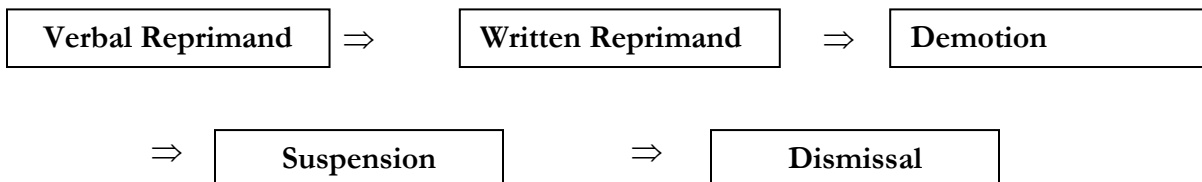
Impersonal

The stove does not care about personalities. It is impartial. It will burn whoever touches it and burn that part of the body with which it comes in contact. Discipline is most effective when the employee feels that the object of the criticism is the act itself and not the person associated with it. In other words, the supervisor acts impersonally to prevent any future act of this sort, rather than to change the employee’s entire make-up. This may not be easy, but employees readily sense the distinction between criticism directed at their behavior and criticism that is viewed as a personal attack. Most people can accept the first type of criticism, but no one readily accepts the second. Application of these four principles can do much to assist the supervisor in coping with employee behavior that detracts from the overall goals and objectives of the work group.

If the approach has worked correctly, the first experience of progressive discipline corrects the problem (and it usually does). The employee understands the consequences of his/her actions, the situation is resolved (with hopefully a minimal level of pain), and no further action is required.

IX. DISCIPLINARY ACTIONS

As a Supervisor (supervisor), it is important for you to become very familiar with all employer policies and procedures. You are responsible for ensuring that your staff is in compliance with all of the rules and regulations governing employment. Disciplinary action or measures may include, subject to the policies, administrative rules and regulations, and any of the following levels of progressive discipline:



1. All formal discipline must be approved in accordance with the employer's policy. With regard to the imposition of discipline, pay particular attention to the employer's work rules, any Employee Conduct and Employee Discipline Procedures, and applicable collective bargaining agreement provisions.
2. An employee may be placed on paid suspension pending investigation for up to 10 workdays with the approval of the appointing authority or designee.
3. Among the grounds for disciplinary action are violations of:
 - a. Federal and State laws and regulations;
 - b. Employer policies and administrative rules and regulations, and procedures; and
 - c. Collective bargaining agreement provisions.

VERBAL/WRITTEN REPRIMAND

A VERBAL/WRITTEN REPRIMAND is used if a first offense is serious enough to warrant disciplinary action. "Reprimand" means a written statement by the appointing authority to an employee notifying the employee that he/she has engaged in conduct which constitutes cause for discipline or corrective action, and which notice is placed in the employees' personnel file.

Points to remember for VERBAL/WRITTEN REPRIMAND:

1. Advise the employee of the right to union representation. If an employee does not desire union or other representation, have the employee sign a waiver. (See Exhibit 3.)
2. Outline the employee's offense or omissions, and include the dates and all pertinent facts in the body of the VERBAL/WRITTEN REPRIMAND.
3. If relevant, mention any previous efforts undertaken to correct the problem, and the employee's response to such direction.

4. State, in writing, that the VERBAL/WRITTEN REPRIMAND is being made a part of the employee's personnel file.
5. Include any corrective measures or behavior expected from the employee in order to meet acceptable standards.
6. Specify the future action that may be taken unless there is improvement.
7. Discuss the matter fully with the employee and employee's representative.
8. Provide the employee with a copy of the VERBAL/WRITTEN REPRIMAND. If the employee or employee's representative refuses to sign, have another supervisory person sign as a witness. Add the following statement to the letter:

“This letter was given to and discussed with the employee who refused to sign it.”

(Witness and Date)

Forward a copy of the signed VERBAL/WRITTEN REPRIMAND to Human Resources for inclusion in the employee's personnel file.

SUSPENSION

A SUSPENSION is the most serious action that can be taken prior to the discharge of an employee. The appointing authority or designee shall not suspend an employee without justification. Such justification shall not be arbitrary, discriminatory or unreasonable.

SUSPENSION imposes a penalty which deprives the employee of pay during the period of suspension. In accordance with contractual requirements and the employer's procedures, the written notice of the action must inform the employee of the charges, the basis of the charges, the effective dates of the action, and the employee's right of appeal, if applicable.

SUSPENSION may be imposed for serious breaches of written rules and/or employer expectations or for continuing unacceptable performance that has not been corrected following previous progressive discipline. A suspension may be warranted for a first offense if it is sufficiently serious or for a repeated violation of a lesser offense after a WRITTEN REPRIMAND has failed to correct the conduct.

DEMOTION

The appointing authority or designee may demote when the employee's performance clearly indicates that satisfactory service is not being rendered; or at the request of an employee.

A demotion may be used when the employee cannot carry out the duties of the assigned job, but has the potential to perform competently in a less complex or demanding capacity.

DISMISSAL

Most collective bargaining agreements provide that an employee who has attained permanent (sometimes referred to as regular) status may not be dismissed, suspended, or reduced in pay or position without justification. Justification includes, but is not limited to, failure to perform assigned duties, substandard performance, misconduct, insubordination and violation of written rules, policies and procedures.

DISMISSAL is normally the last step in the disciplinary process and comes after all other remedial measures have been exhausted. Under rare circumstances, DISMISSAL is used for some first offenses of a very serious nature. The appointing authority must approve all discharges. A notice or letter of discharge must be in writing.

Additional details concerning suspensions, demotions, and dismissals, are contained in the various collective bargaining agreements, federal or state statutes, and employer's policies and procedures.

SUSPENSION PENDING INVESTIGATION

The appointing authority or designee may suspend an employee with pay pending investigation of an action by or conduct of the employee, which may result in cause for disciplinary action. Such a suspension with pay shall not normally exceed fifteen (15) workdays. Since this is a non-disciplinary suspension, there shall be no employee right to appeal.

Any employee who is the subject of criminal charges which upon conviction would constitute justification for discharge may request a voluntary leave of absence without pay pending the disposition of the criminal charges. Such leave would be a personal leave, which may not extend beyond one year.

Prior to placing any employee on suspension pending investigation, a supervisor must consult with his or her approving authority.

X. INVESTIGATIONS AND INTERROGATIONS

One cannot overestimate the importance of conducting a proper administrative investigation. Decisions made as a result of the investigation can positively or negatively affect the professional career of an employee. Therefore, the individual conducting the investigation must approach it in a professional and objective manner. The sole purpose of the investigation is to develop facts relating to the matter being investigated so that an informed decision may be made on the course of action to be taken. No final judgment or decision should be made prior to the conclusion of the investigation and the employee has had an opportunity to tell his/her side of the story. However, once the information is gathered, the facts must establish a basis for a correct and just decision.

The sooner those facts can be gathered, the better. If possible, employees witnessing any incident that requires investigation should put their observations in writing on the same day, by the end of their work shift. There are multiple purposes for conducting investigations. One is to establish employee misconduct or negligence that should be addressed through the corrective discipline process. Another is to determine if there is need to establish procedures to be used in the normal course of business to affect the mission and goals of the employer, or to determine if procedures already in place are deficient or inadequate. Finally, it is important to remember that an investigation may also establish appropriate conduct on the part of an employee, and that should also be recognized.

The individual conducting the investigation must also be aware of those circumstances in which an employee is entitled to representation during any interview or interrogation. The union will provide representation to those employees who are members of a bargaining unit. Other employees who have a right to representation may have legal counsel or another representative present. A review of the relevant provisions of the collective bargaining agreement should be completed prior to scheduling an interview or interrogation. Contact the Human Resources Department if there are any questions on how to proceed.

Once the facts are developed, they must be reviewed to determine whether or not discipline is appropriate. In order for the Town to support discipline, the Just Cause Standard should be used as a guide to permanent or regular employees. Remember: there are seven (7) elements generally recognized as comprising the Just Cause Standard, which must be satisfied before discipline can be supported.

When the investigation is complete, and the Town has determined that discipline may be appropriate, the employee must be offered a pre-disciplinary conference or what is commonly referred to as a "Loudermill". This would apply to any suspension, demotion, or discharge. It is important to remember that the pre-disciplinary conference is not a continuation of the investigatory process, so it cannot be used as a tool to gather further evidence in support of a decision to discipline an employee. If the subject of a pre-disciplinary conference provides additional information not previously known, the investigatory process may have to be reinitiated. All facts that might need to be presented at a later date must be known prior to a decision to discipline being made.

Review of the Incident

A Supervisor in consultation with Human Resources, as appropriate, should review all reports of an incident for completeness and accuracy. The Supervisor who is first to become aware of an incident should ensure that proper steps are taken for the immediate protection of employees, students, and the educational community, if necessary, and maintain the orderly operation of the Town. Once the initial report is received, it must be reviewed to determine if further investigation is needed. If so, an investigator should be assigned to review the existing information and gather further facts as necessary.

Investigative Process

An administrative investigation should be initiated when an incident occurs that is serious enough to warrant an internal or criminal investigation. An administrative investigation is conducted to develop facts relating to the matter being investigated (who, what, where, when, how and why) by an impartial investigator. Every attempt should be made to determine:

Who:

Who was involved - initially, directly, indirectly, joined in, responded to, witnessed, staff, non-employee (e.g., student, member of public)? How many people were involved or in the area? Who reported the incident? Who found/handled/secured any evidence? Who photographed the scene, incident, and individuals? Who resolved the issue? Were there any witnesses (use name, location and phone numbers if possible)?

What:

What happened? Get a chronologically detailed description of the event. What evidence was found? What vehicle, equipment or weapon was used? If appropriate, what were the weather conditions-dark, light, rain, dry, hot or cold. What other environmental facts was involved-lighting, temperature, condition of equipment? What problems were caused him the incident? What was the outcome?

Where:

Where did the incident take place? Where were the individuals involved before, during or after the incident? Where were the witnesses? Where was the evidence found, where was it taken? Try to relate the position of individuals and objects to the incident.

When:

When did the incident occur? How long did it last? At what time or in what sequence did things happen before, during or after the incident?

Why:

Was there a reason why the incident occurred or why it turned out the way it did? Why were certain responses used during the incident, e.g., use of force, call for medical assistance, call for Police assistance, etc.?

How:

How did the incident happen? How did people come to be involved? How was it resolved?

Action Taken:

What was the initial response? What was the follow-up response? What further action is required?

Investigative Process

The assigned investigator should gather relevant information necessary to conduct a thorough investigation. No person should be assigned to conduct an investigation that is involved or is a witness to the matter under investigation, or who otherwise cannot conduct a fair and impartial investigation. Investigators should not recommend a specific level of discipline, but rather provide sufficient information on which a fair and just decision may be based. Ultimately, the investigator must determine whether the charge(s) or allegation(s) were substantiated, not substantiated, or could not be substantiated. Copies of any reports written by employees pertaining to the matter under investigation should be included as part of the investigative package, as well as any written policies, procedures or work rules which apply. All other information-written interviews, photographs, relevant documents, and other appropriate materials-should be also included.

It is advisable, particularly if numerous interviews are conducted, that a case file be prepared which has identifying information allowing it to be easily retrieved. A number might be assigned which identifies the year, sequential number of the investigation and work location of the employee involved.

XI. REVIEW OF DISCIPLINARY ACTION

When recommending or initiating corrective action, supervisors should be guided by the following elements:

- a. The policies, administrative rules and regulations of the Board, applicable collective bargaining agreement, etc., governing the terms and conditions of employment;
- b. The specific rule violation;
- c. The effect of the offense on the efficient operation of the organization;
- d. The seriousness of the offense relative to the employee's duties and responsibilities;
- e. How the rule was established and communicated;
- f. The uniformity of prior enforcement;
- g. How well the due process provisions were followed;
- h. Whether there is sufficient proof that the charges have been substantiated;
- i. Any mitigating or aggravating circumstances;
- j. Whether the rule is job related;
- k. Whether the rule violated any laws or regulations;
- l. Whether there is any conflicting evidence;
- m. The employee's past work record;
- n. The previous measures taken to correct employee conduct; and
- o. The timeliness of the disciplinary action.

If an employee's conduct warrants corrective action and can be substantiated, then discipline should be imposed. When the considered action cannot be supported in the context of the foregoing review items, it should be dropped. An important principle is to ensure fairness to employees, while enforcing legitimate work rules for the good of the organization. A helpful guideline for supervisors is to take the minimum corrective action required that is likely to correct the problem while maintaining general discipline and morale.

XII. THE JUST CAUSE STANDARD OF DISCIPLINE

Supervisors are accountable for maintaining proper discipline within their span of control. In discharging this responsibility, every effort should be made to maintain harmonious relationships, positive morale, and good conduct, with the goal of minimizing the necessity for disciplinary action. Discipline should be initiated only in the interests of promoting efficiency, not for subjective reasons such as a personal dislike of an individual. All available facts must be weighed, and employees must be given an opportunity to present their case prior to determining the appropriate action.

Many union contracts and personnel rules provide that permanent or regular employees will not be disciplined except for “just cause” or “justification.” Accordingly, such justification shall not be arbitrary, discriminatory or unreasonable. Although “just cause” is not specifically defined, there are seven recognized standards used by arbitrators to ascertain if the “just cause” standard is met. These standards are:

1. “Did the employer give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee’s conduct?”

Note 1: The forewarning or foreknowledge may properly have been given verbally by management or in writing through the use of printed materials outlining the employer’s policy, procedures, etc.

Note 2: There must have been actual verbal or written communication of the rules and penalties to the employee.

Note 3: An affirmative finding of such communication does not in all cases require a “yes” answer to question Note 1. This is because certain offenses such as insubordination, coming to work intoxicated, drinking intoxicating beverages on the job, or theft of employer or personal property, are so serious or so obvious that any employee in the industrial society may properly be expected to know already that such conduct is offensive and heavily punishable.

Note 4: If there is no specific contractual prohibition or restriction, the employer generally has the right to promulgate reasonable rules and give reasonable orders, which need not have been negotiated with the union.

2. “Was the employer’s rule or managerial order reasonably related to the orderly, efficient, and safe operation of the department?”

Note: Even if the work rule in question is considered unreasonable, the employee must nevertheless obey it unless the rule or order would seriously and immediately jeopardize the employee’s personal safety. The accepted rule of thumb is to “work now and grieve later” if there is a perceived violation of the employee’s rights.

3. “Did the employer, before disciplining an employee, investigate to determine whether the employee did in fact violate or disobey a rule or order of management?”

Note 1: This principle is referred to as the employee’s “day in court.” An employee has the right to know with reasonable precision the offense with which he or she is being charged and to have an opportunity to defend the behavior.

Note 2: The employer’s investigation must normally be conducted before a decision is made to discipline an employee. If the employer fails to investigate, this failure may not be excused on the grounds that the employee will get his/her “day in court” through the steps of the grievance procedure.

Note 3: The employer’s investigation must include an inquiry into possible justification for the alleged rule violation.

4. “Was the employer’s investigation conducted fairly and impartially?”

Note 1: During an investigation the management official may be both “investigator” and “decision maker”, but should not be a witness against the employee.

Note 2: It is essential that a higher, detached management official assume and conscientiously perform the decision-making role.

Note 3: In some disputes between an employee and a management person there are no witnesses to an incident other than the two immediate participants. In such cases, it is particularly important that the “investigator” rigorously and thoroughly question both the employee and management participant.

5. “During the investigation, did the employer obtain substantial evidence or proof of the charges leveled against the employee?”

Note 1: It is not required that the evidence be preponderant, conclusive or “beyond a reasonable doubt.” But, the evidence must be substantial enough to persuade an arbitrator. “Clear and convincing” is the standard that is generally applied.

Note 2: The investigator should actively search out witnesses and evidence, not passively take what participants or “volunteer” witnesses offer.

6. “Has the employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?”

Note 1: A “no” answer to this question warrants negation or modification of the discipline imposed.

Note 2: If the employer has been lax in enforcing rules and orders and decides henceforth to apply them rigorously, it may avoid a negative ruling by telling all employees beforehand of its intent to hereafter enforce all rules as written.

7. “Was the degree of discipline administered by the employer in a particular case reasonably related to (a) the seriousness of the employee’s proven offense; (b) the record of the employee in his or her service with the employer; and (c) the general discipline standards applied by the employer?”

Note 1: A minor proven offense may not merit harsh discipline unless the employee has properly been found culpable of the same or other offenses in the past. (There is no rule as to what number of previous offenses constitutes a “good” a “fair” or “bad” record. The concept of reasonableness applies.)

Note 2: An employee’s record of previous offenses should not be used to discover whether the employee was culpable of the immediate or latest incident. The only proper use of an employee’s record is to help determine the severity of discipline once the employee has properly been found guilty of the immediate offense.

Note 3: Given the same proven offense for two or more employees, the employee’s respective records provide the only proper basis for “distinguishing” among them in the administration of discipline for said offense. Thus, if employee A’s record is significantly better than those of employees B, C, and D, the employer may properly give a lighter punishment than it gives the others for the same offense.

A recap of the principles underlying these questions provides that:

1. The employee has forewarning and foreknowledge of the consequences of the conduct;
2. The employer has established reasonable work rules;
3. The employer has conducted a thorough, fair, and impartial investigation;
4. The employer’s evidence is substantial;
5. The employer’s practices are carried out in an evenhanded and non-discriminatory manner; and;
6. The punishment fits the crime.

If these criteria have been met then the action taken should be considered as having met the “just cause” or “justification” standard.

XIII. IMPORTANT RULINGS

The United States Supreme Court's decision in Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532 (1985) has had a significant impact on the rights afforded to employees in the disciplinary process.

Based on this decision, the law requires that a pre-disciplinary conference be held for permanent employees prior to the employer taking an action, which could result in the denial of a property interest (e.g., suspension, demotion, or discharge). This pre-disciplinary conference has become known as a "Loudermill." This pre-disciplinary conference is not being held to definitively resolve the propriety of the action, but as a check against mistaken decisions. An employee who has not achieved permanent status is not entitled to a pre-disciplinary conference. However, the employer must have a valid reason for terminating his or her employment. (A pre-disciplinary conference is not required for a verbal or written reprimand.)

Employees in an initial probationary period have the same right to union representation as permanent employees. A principal distinction between initial probationary and permanent employees relates to the appeal process. Discharge of employees during a probationary period is generally not subject to the grievance procedure or the appeal process although certain employees may be entitled to an administrative hearing.

The Garrity warning arose out of the U.S. Supreme Court decision Garrity v New Jersey, 385 US 493 (1967) which afforded law enforcement officers and other public employees the right to be free from compulsory self-incrimination. Essentially, Garrity prohibits the statement(s) gathered from the employee during a departmental disciplinary proceeding or internal administrative investigation from being used against him or her in a subsequent criminal prosecution. This does not, however, preclude the use of such statements in subsequent disciplinary proceedings or civil lawsuits.

Consistent with the ruling in NLRB v. J. Weingarten, Inc. 420 U.S. 251, 95 S. Ct. 959 (1975), the following rights are provided to employees during the investigatory process.

1. A right to representation.
2. The right to representation arises when the employee requests it. Supervisors should be aware that certain contracts require employees to be informed of their right to representation.
3. The right to representation is limited to those situations where the employee reasonably believes the investigation will result in disciplinary action. If a conference is being held solely to inform the employee of disciplinary action, an employee is not entitled to union representation.
4. The right to choose among equally available union representation. An employee cannot however, insist upon a specific union representative who is unavailable through no fault of the employer and whose presence would cause an unreasonable delay in the process.

5. The exercise of this right may not interfere with legitimate employer action.
6. An employer must allow time, if requested, for an employee to have a pre-interview consultation with the union representative.
7. The employer cannot require the union representative to remain silent throughout the conference.
8. The union representative does not have the right, either through unduly provocative questions, or the tone and manner of conduct, to transform the conference into a purely adversary confrontation between the union and the employer.

XIV. TENETS IN DISCIPLINARY ACTION DISPUTES*

The employer has no duty to bargain with the union representative who attends the interview.

1. An employee's responsibility is to obey a supervisor's order and if the employee disagrees with it, to grieve later.
2. A commonly accepted exception to the "obey now, grieve later" standard is work in which an employee's health and/or safety would be endangered, or an order that is demeaning or unlawful; in this case, it is the burden of the union to show this to be a fact.
3. An employee cannot be held to be insubordinate and to warrant discipline for failing to comply with an order, unless supervision has met its responsibility; namely, the order given must be clear and meaningful and the consequences of failure to comply must be made known.
4. When management has been lax in enforcing a departmental rule, disciplining an employee for violating the rule is subject to being set aside or modified on the grounds that discipline must be evenhanded and uniformly applied.
5. The acts of an employee away from the worksite are generally not an acceptable basis for disciplinary action under a contract unless the employer can show a connection between the employee's "off premises" act and his/her employment in the worksite.
6. Due process in disciplinary matters requires that management investigate the alleged offense and provide an opportunity for the offending employee to have union representation and to give his/her version of the incident before final disciplinary action is taken.
7. Progressive or corrective discipline for minor offenses by an employee usually follows the disciplinary steps of counseling, written reprimand, suspension and discharge.
8. Although progressive discipline is generally viewed as a fair and equitable procedure, the increased severity of the disciplinary action taken is not likely to be upheld in arbitration [where applicable] if supervisory personnel apply the discipline automatically and fail to evaluate carefully the circumstances of each incident of offense.
9. For the sustaining of disciplinary actions short of discharge, the preponderance of evidence generally suffices as acceptable proof, but in discharge cases the quantum of proof demanded is usually more stringent - namely, clear and convincing evidence for discharges generally and for some arbitrators even proof beyond a reasonable doubt for offenses of criminal proportions or acts that are morally reprehensible.

* Matthew A. Kelly, Labor and Industrial Relations; Terms, Laws, Court Decisions and Arbitration Standards, (John Hopkins University Press, Baltimore, MD, 1987).

XV. EMPLOYEE DEPENDABILITY

It is clear that absenteeism is a serious problem for any organization. Frequent absenteeism reduces the level of service provided, places an extra burden on management and coworkers, and results in increased operational costs. Therefore, regular attendance at work must be a prerequisite for continued employment. Employees who do not report for work on a regular basis cannot be considered dependable or available for the scheduling and management of work assignments. An efficient employer, or organization striving to become one, cannot tolerate employees who have excessive absenteeism.

Each employee is responsible for maintaining a good attendance record. To meet this responsibility, each employee must strive to maintain proper health standards and take precautions against illness. Whenever it is not possible for an employee to come to work due to an illness, the employee should seek appropriate medical attention and take the steps necessary to ensure a swift return. Additionally, it is imperative that each employee not let minor inconveniences result in absence from work. Sick, vacation, and personal leave requests must be made in accordance with the employer's policy and any other relevant requirements.

Employees are expected to report to work on time, adhere to the time periods established for breaks and lunch, and remain at their workstation until the established quitting time.

The supervisor must inform employees who to contact when calling in reference to absence or lateness. The employee must indicate the reasons for the absence. Exceptions to the daily reporting requirement may be made at the discretion of the supervisor for an extended absence. Messages should not be left by someone other than the employee except in circumstances clearly beyond the employee's control. If the absence is expected to exceed the reported duration, the employee must notify the immediate supervisor or designee prior to the extended absence. Absence due to illness for more than three consecutive working days, or three days in the event of an FMLA qualifying event, must be documented by a Medical Certificate (Exhibit A) stating the reason for the absence.

Each supervisor must maintain an individual employee record, which contains the reasons for each absence and the time of notification. Medical Certificates and other medical information concerning an employee are to be maintained confidentially.

Attendance Overview

1. Supervisors must review the attendance records of employees on a regular basis in accordance with the provisions of the employer's procedures and pertinent contract provisions.
2. Communicate the following to all staff.
 - a. Your attendance records will be reviewed on a regular basis.

- b. Absenteeism, for whatever reason, creates a hardship for other staff, and limits the overall ability of the employer's to function properly.
 - c. Excessive absenteeism has a bearing on an employee's work record, and following progressive discipline, may eventually be cause for termination.
3. Identify employees whose attendance records fall below employer's standards.
 4. Initiate constructive counseling sessions and a program of expected improvement for each employee whose attendance falls below the standards. Document and keep supervisory notes of each session. Be sure to include all expectations for improvement.

The use of occasions or periods of absence for calculating excessive absenteeism is effective in identifying habitual offenders and does not penalize the employee with a lengthy absence for valid medical reasons. "Duration-type" absences should be viewed individually and given proper consideration based on any unique circumstances and the previous absenteeism patterns of the employee. Cases involving therapy, relapse, or recurrence of a recent illness or injury, (e.g., an employee returns to work prematurely and because of pre-existing condition is forced to be away from work again) may in certain instances be considered one occasion or period of absence. Pre-scheduled, approved use of sick leave such as doctor's visits or funeral leave should not be counted as occasions or tandem absences. Similarly, absences that have been approved by an employer pursuant to the federal Family and Medical Leave Act (FMLA) of 1993 as amended should not be counted as an occasion of absence or tandem absence.

Another key indicator in reviewing attendance is the pattern of absences occurring in tandem with other scheduled days off. For example, what is the actual number of times an employee has been absent immediately preceding or following holidays, weekends or scheduled days off?

In reviewing attendance, supervisors must be aware of the work histories of each employee within their span of supervision. A final judgment on excessive absenteeism should not be rendered until all pertinent information has been carefully weighed and evaluated.

Whenever a performance review is scheduled, you must incorporate any information and steps taken relative to attendance on the appropriate evaluation form. If all other corrective steps have been taken (including counseling, written reprimands, unsatisfactory ratings, etc.) and the employee's attendance record does not show improvement, termination procedures are to be implemented in accordance with employer's procedures.

XVI. BEING AN EFFECTIVE MANAGEMENT WITNESS

In preparation for a grievance or arbitration hearing, the employer's designee will meet with the appropriate supervisory staff to review case documents and testimony to be presented by management's witnesses.

If you are called upon to testify, your attitude and demeanor are important. You should strive to act in a calm, straightforward, and objective manner. A witness's primary responsibility is to answer the questions truthfully. It is important that you establish credibility with the hearing officer or arbitrator as quickly as possible.

You should be positive and succinct without appearing overly confident. You should answer the question asked and not volunteer unnecessary information. "Yes" and "No" answers should be given whenever appropriate.

If you do not know the answer to a question, respond, "I don't know." Do not guess. A witness should not be coaxed into making speculative remarks or interjecting hearsay evidence.

The same rule applies if you are unsure as to the meaning of a question. You should not hesitate to have the person asking the question clarify or restate the question.

During any cross-examination, the opposing side should be treated with respect. You should avoid becoming embroiled in an argument. Even if you feel like you are being "attacked" or "confronted", it is important that you maintain your composure.

Remember, your function is to testify, not to argue the merits of the case. If the employer's designee believes that the opposing side's questions or comments are inappropriate or irrelevant, an objection can be directed to the hearing officer or arbitrator.

Should you be asked to testify concerning an employee's ability, or any other matter requiring personal judgment, you must be prepared to state the facts upon which your judgment is based. To the extent possible, your comments or opinions should be grounded on objective criteria. For example, if you are asked to testify about an employee's poor quality of work, you should be prepared to offer specific examples, e.g., work samples which support the claim that the employee's job performance is deficient or unacceptable.

You must remember that when the hearing is concluded, you will most likely be back working with the employee who has been disciplined. As a consequence, it is important to be professional and demonstrate to the hearing officer that you have acted in a fair and evenhanded manner.

In summary, witnesses should conduct themselves in a dignified manner. While witnesses should present testimony in their own words, a basic sense of order and decorum is essential in this type of forum. Witnesses should always refrain from emotional outbursts, bitter remarks, personal invective, or long speeches, which only serve to confuse the issue. These tactics will have an adverse effect on the proceedings, and diminish the basic working relationship between the parties.

As a witness, you should not exaggerate the employee's acts or deficiencies. You should rely on facts, and minimize the need for argument. You should not attempt to conceal essential information or distort the truth. An experienced arbitrator or hearing officer will quickly pick up on these tactics. Subterfuge can only serve to undermine your credibility and negatively impact upon the merits of the case.

Ultimately, the effectiveness of your testimony will rest with your ability to establish credibility, offer factual testimony in support of management's position, and maintain proper demeanor throughout the proceedings.

XVII. FAILURE TO FOLLOW A DIRECT ORDER

While failure to follow a direct order is not a usual occurrence, supervisors must be aware of how to handle this type of problem. Failure to follow a direct order is one of the most serious forms of employee misconduct. In order for a direct order to have been issued the following conditions must be met:

1. The direct order must be clearly communicated by a supervisor.
2. The direct order must be given by an individual with the authority to give such an order.
3. The ordered employee must be, or clearly should be, aware that the supervisor giving the order has the authority to do so.
4. The direct order cannot subject the employee to an unsafe or unhealthy condition beyond that which would normally be expected.
5. The direct order cannot require the employee to commit an illegal act.
6. The direct order must be related to the orderly, efficient, and safe operation of the organization's business.
7. Prior to issuing the direct order, the employee must have clearly refused to carry out the direction/instruction or order.

Order of Events

The following typifies the sequence of events associated with the issuance of a direct order:

1. An employee refuses to perform a task or direction/instruction.
2. The supervisor questions the employee to determine reason for refusal.
3. The supervisor evaluates the situation and the validity of the direction. If the employee's basis for refusal is unacceptable or does not outweigh the need to perform the task, the supervisor again directs the employee to carry out the order.
4. The employee is again ordered to perform the task.
5. If the employee again refuses, the supervisor initiates the following steps:
 - a. Issues a direct order to the employee
 - b. Warns the employee that refusal to carry out the direct order is grounds for discharge
 - c. Once again, orders the employee to perform the task

- d. Follows up to determine if task has actually been performed

Issuing a Direct Order

A supervisor, prior to charging an employee with refusing to follow a direct order, must make the following statements:

Statement A: I have given you a direct order. Failure to carry out this order will be considered refusal to follow a direct order.

Statement B: You are hereby warned that failure to carry out this order may be grounds for discharge.

Statement C: Following Statement “A” and “B”, the employee is again ordered to perform the task or order.

Note: There may be some instances, e.g., assault on a fellow employee, when it is not practical or possible for the supervisor to repeat the entire sequence for issuing a direct order. In these cases, the employee’s initial failure to carry out such an order may result in discharge.

It should be pointed out that refusal to carry out a direct order may result in discharge; failure to follow an order a suspension; and failure to follow a direction/instruction a written reprimand. It is important to recognize these distinctions in recommending or initiating the level of discipline to be imposed. A direct order should not be given unless discharge is definitely being considered, and the infraction constitutes a dismissible offense.

When an employee has been duly ordered and still refuses to perform the task, the employee may be relieved of duty by the supervisor. The supervisor should immediately write up a summary of the incident and confer with the appropriate Supervisor. Failure to follow a direct order is grounds for disciplinary action, and can be grounds for discharge.

XVIII. OFF-DUTY EMPLOYEE MISCONDUCT

The general rule is that an employer may not discipline an employee for off-duty conduct. An exception to this rule permits discipline when the off-duty conduct affects the employer-employee relationship. For example, this may occur when: 1) the conduct renders the employee unable to perform the job; or 2) the employer is harmed, either directly or indirectly, by the off-duty conduct (e.g., employer public image).

Whether the off-duty conduct results in disciplinary action must be based upon the employer conducting its own investigation. The finding of a criminal court on the guilt or innocence of an employee does not necessarily bind the employer. While the organization's policy may require that employees who are arrested must notify their supervisor of any criminal charges that have been filed, ultimately, discipline may be imposed only when the outside activity definitively relates to the employer's operations. The misconduct must have arisen out of employment activities or carry with it a serious threat of disrupting the orderly, efficient, or safe conduct of the employers business. In other words, there must be a "nexus" or "connection" between the specific offense and the employee's ability to effectively perform the job function as it relates to the employer's operations.

Questions as to how to proceed in cases of suspected off-duty employee misconduct should be directed to the Human Resources Department.

XIX. ADMINISTERING DISCIPLINE

Specific procedures must be followed when administering discipline. In order to avoid a dispute over whether or not appropriate procedural requirements were met, it is necessary that all applicable policies and procedures be followed when disciplining employees.

Investigation and Right to Pre-disciplinary Conference

Before a non-probationary support staff employee is disciplined by suspension with or without pay or by discharge, management shall conduct an investigation of the problem to determine the facts and the employee shall then be given the opportunity for a pre-disciplinary conference. At the pre-disciplinary conference, the employee shall be advised of: 1) the results of the investigation; 2) the proposed disciplinary action; and 3) given an opportunity to respond verbally to the results of the investigation and the proposed disciplinary action. The employee may have a representative in attendance at this meeting.

Representation

If the employee has a union representative or other representative present, the representative's role is to support the employee, not to advocate for the employee. A representative may ask clarifying questions, but may not argue the merits of the employer's actions at that time, or "take over" the conference.

Following the conference, if the employer's is intent on taking the intended action, a notice of suspension, demotion or discharge, whichever applies, is mailed or hand delivered to the employee. This notice provides information about the employee's appeal rights, if any.

XX. GLOSSARY OF TERMS

Burden of Proof	The responsibility of the moving party to provide sufficient evidence to prove or disprove a claim.
Constructive Criticism	Helpful advice concerning an employee's job weaknesses or deficiencies.
Critical Incident File	A file maintained by a supervisor, which documents notable occurrences of employee performance (positive and negative) during the rating period.
Double Jeopardy	Just as a criminal cannot be tried for a crime more than once, an employee cannot be disciplined for the same incident more than once. Although an employee's history of past discipline can influence a current discipline decision, once discipline is rendered, it cannot be changed nor can it be reapplied for the same incident.
Due Process	In an employment situation, due process means providing an employee the opportunity to be heard before taking an adverse action against the employee. The 14 th Amendment of the Constitution affords a person due process rights whenever a life, liberty or property interest is at stake. The Courts have determined that a number of employment actions may violate a person's property rights, including termination of one's employment or placement on unpaid suspension. Labor contracts typically include processes for discipline that are consistent with the principle of due process.
Employment-At-Will	Employment that does not provide an employee job security since the person can be discharged with or without cause.
Exempt Employee	Employees whose positions meet the specific requirements of the Fair Labor Standards Act (FLSA) and are exempt from overtime pay.
Grievance	A grievance is a formal claim by an employee or union that an action by the employer has violated the terms of the labor agreement. Union contracts lay out formal grievance procedures providing both parties a method of resolving disputes.

Counseling	The first step in progressive discipline where the supervisor discusses and advises an employee who is not performing up to standard.
Non-Exempt Employee	An employee whose position does not meet the specific requirements of the Fair Labor Standards Act (FLSA) and must be paid one-and-one-half times their regular pay for actual hours worked in excess of 40 hours per work week, with some limited exceptions.
Performance Evaluation	A process in which supervisors plan, monitor, and appraise employee performance.
Overall Evaluation Rating	Typically a four or five level rating system which may include such categories as excellent or distinguished, proficient, needs improvement, and unsatisfactory.
Unauthorized Leave	An employee's failure to report an absence according to employer policy or practice or to otherwise be absent from work without proper authorization.
Verbal	Uttered by mouth, spoken, using speech to convey a message; used synonymously with oral.
Warning	To caution about certain acts, admonish, inform or notify in advance.

EXHIBIT 1

Sample Letter

Counseling Record

Date:

To:

From:

Subject: Counseling

This is to confirm our counseling session based on your involvement in the following incident/matter.

1. Describe concisely the reason for this counseling, that is, the circumstances or deficiencies involved.
2. Describe the employee's response concerning the deficiencies of circumstances stated above.
3. Describe the improvements and expectations you have outlined to the employee, and the timeframes set for meeting them.

Issued by:	_____	
	Supervisor's Signature	Date
Received by:	_____	
	Employee's Signature	Date

NOTE: An initial counseling will not, by itself, normally affect an employee's overall performance. Counseling is not considered disciplinary action against an employee.

EXHIBIT 2

Sample Letter

Written Reprimand

Date:

To:

From:

Subject: Written Reprimand*

This letter is to serve as a written reprimand concerning the following incident (indicate any previous times/dates of counseling, if applicable).

Any further instances of a similar nature may result in further disciplinary action up to and including discharge.

If you are experiencing personal problems which are affecting your work performance, you may avail yourself of the Employee Assistance Program by contacting Program Administrator at _____.

You should be aware that this letter of reprimand is being placed in your personnel file, and that you have a right to appeal this action in accordance with the provisions of your contract.

Issued by:

Supervisor's Signature

Date

Received by**:

Employee's Signature

Date

* This will vary depending on the level of infraction. A written reprimand is considered a slightly more severe penalty than a verbal reprimand.

** Union Representative or other supervisor if employee refuses to sign letter.

EXHIBIT 3

Sample Letter

Waiver of Representation

Date:

To:

From:

Subject: Waiver of Representation

I, the undersigned, understand that the findings of this conference could result in disciplinary action, and that I have a right to but choose not to be represented by the union or another individual.

Employee Signature

Date

Sample Letter

Date:

From:

On _____ you were counseled that your attendance record was in need of improvement. Since that date, your record indicates the following occasions of sick leave:

A. Still in need of improvement.

B. Unsatisfactory and requires placement on a Medical Certificate requirement for all absences due to illness.

(Supervisor's explanation of why A. or B. was indicated above):

This letter is to serve as notice that continued poor attendance might result in further progressive discipline.

If you are experiencing personal problems which are affecting your work performance, you may avail yourself of the Employee Assistance Program by contacting the Program Administrator at _____.

You should be aware that this notice is being placed in your personnel file, and that you have a right to appeal this action in accordance with the provisions of your union contract.

Issued by: _____

Supervisor's Signature _____ Date _____

Received by*: _____
Employee's Signature Date

* Union Representative or other supervisor if employee refuses to sign letter.

EXHIBIT 5

EMPLOYEE CONDUCT PROCEDURE

General Statement

Each Town employee will engage in professional, appropriate and ethical conduct while carrying out official duties and while engaged in off duty activities which directly reflect on the Town.

Employee Responsibility

Each employee of the Town will act in a professional, ethical and responsible manner at all times. Each employee will become familiar with the tables of organization depicting the Town and its chains of command. Each employee will obey any lawful direction of a supervisor in the chain of command. An employee given an instruction which conflicts with a previous instruction or order will inform the present supervisor of the conflict and follow the instruction as issued.

Employee Conduct Standards

Each employee will:

1. Act in a professional manner showing respect to other employees and the public.
2. Be courteous and accommodating in all dealings with the public, including telephone etiquette.
3. Comply with and enforce all federal and state laws, and Town and departmental policies and procedures.
4. Comply with official notices and other instructions.
5. Comply with the Connecticut Statutes on firearms.
6. Cooperate fully and truthfully in any inquiry or investigation conducted by the Town and/or any law enforcement or regulatory agency.
7. Exercise due diligence in the performance of one's official duties and responsibilities.
8. Exhibit proper decorum at all times.
9. Inform the supervisor and the Human Resources Department, electronically and in writing, of any change of address and/or telephone number within 24 hours.
10. Maintain a safe, secure and sanitary work environment.
11. Maintain any personal property and medication in a secure manner.
12. Maintain good stewardship of all Town property and equipment.
13. Meet all employee responsibilities for attendance and punctuality.
14. Remain alert, aware of, and responsive to the surroundings at all times.
15. Remain at ones assigned workstation until properly relieved and/or remain at worksite as required.
16. Report any arrest and/or conviction to the appropriate supervisor on or by the next scheduled workday, but no later than 48 hours of the arrest. This requirement does not apply to minor traffic violations. An employee will submit supporting documentation of arrest or subsequent conviction. Any employee on extended leave must report any arrest or subsequent conviction to the supervisor within 48 hours.

17. Report immediately to a supervisor any threat, act of intimidation, harassment, physical or verbal abuse or assault. Incidents of alleged discrimination or sexual harassment will be reported in accordance with the Town's Anti-Harassment policy.
18. Respect and protect the rights of all staff.

Prohibited Behaviors

Behaviors that are prohibited include, but are not limited to:

1. Abuse of sick time, accrued leave or workers' compensation.
2. Accepting any unauthorized item or service for oneself or a family member, including but not limited to, a gift, loan, reward or promise of future employment.
3. Any act that jeopardizes the security, health, safety, or welfare of staff, or the public.
4. Conveyance or possession of unauthorized items within, into or out of a Town, or on Town property.
5. Divulging individual or other computer password codes for Town owned or leased computers to any individual, unless authorized to do so by the Town Administrator.
6. Engaging in abusive, obscene, threatening, intimidating language or behavior.
7. Engaging in any activity, which would conflict with the proper discharge of or impair the independence of judgment in the performance of the job.
8. Engaging in any political activities that conflict with the Hatch Act or CGS § 7-421 to 7-421b.
9. Engaging in bartering, gambling or games of chance on Town time.
10. Engaging in behavior which is sexually, emotionally, or physically abusive or harassing toward staff, or member of the public.
11. Engaging in conduct that violates the *Employee Conduct Standards*.
12. Engaging in insubordination.
13. Engaging in retaliation or reprisal (to include coercion or threatening behavior) against an employee or member of the public for participating in activities that are protected by law or Town policy.
14. Engaging in rude, discourteous, inappropriate, disruptive or unprofessional conduct.
15. Engaging in unprofessional or illegal behavior, both on and off duty that could reflect negatively on the or conflict with the Town's mission, to include union or membership with security risk groups, criminal enterprises, hate groups, or groups of high interest to law enforcement. It will be the employee's responsibility to seek written clarification from the Human Resources Department regarding such union or membership.
16. Falsifying, destroying, or altering without proper authorization any document, log book, or other official record without (e.g. timecard, attendance report, employment applications)
17. Lying or giving false information regarding an incident.
18. Neglect of duty or failure to supervise.
19. Obtaining non-public information through a computer terminal for a purpose other than official Town business.
20. Operating a Town-owned or private vehicle on business without the proper license, insurance coverage and training.
21. Operating a vehicle on Town property or on Town business in an unsafe or improper manner.

22. Possessing unauthorized items (e.g. weapons) while on duty.
23. Releasing confidential, private or unauthorized records or documents.
24. Reporting to work in an impaired condition as a result of the use of alcohol, an illegal drug, or any medication. Employees will not consume alcohol while on duty or at Town sponsored events.
25. Sleeping or inattentiveness while on duty.
26. Smoking in Town buildings or in Town vehicles.
27. Stealing, neglecting or misusing Town funds, property, equipment, materials or supplies or attempting to remove such items from the premises without the written permission of a supervisor.
28. Theft.
29. Unauthorized possession of any firearm or other weapon while on duty or Town property.
30. Use of force.
31. Using a Town-owned vehicle for personal, rather than official business, on or off duty.
32. Using ones official position, uniform, identification or badge to gain any personal advantage or an advantage for another in any improper or unauthorized manner.
33. Using or appropriating property belonging to the Town or public in an unauthorized manner.
34. Violating the Town's *Code of Ethics* including the conflict of interest provisions.

Reporting Policy and/or Conduct Violations

Each Town employee will report to a supervisor or appropriate personnel any policy violation or breach of professional conduct involving staff, or member of the public.

EXHIBIT 6

EMPLOYEE DEPENDABILITY GUIDELINES AND PROCEDURE

General Statement of Responsibility

Each employee is responsible for maintaining a good attendance record. Each employee is expected to report to work on time, observe the Town's guidelines for breaks and lunch, and remain at the workstation until the established quitting time.

Sick, Vacation and Personal Leave requests must be made in accordance with these guidelines and any other relevant requirements.

Definitions

For the purposes of these guidelines, the following definitions will apply:

- A. Absence: An Absence is any time you are not at work during your scheduled hours or extra-duty assignment, regardless of the reason. However, not all Absences reflect negatively on your record. Only "Occasions of Absence" may.
- B. Occasion of Absence: An "Occasion of Absence" (or "Occasion") is one or more *unscheduled or unauthorized* continuous day(s) or partial day(s) of Absence.
- C. Tandem Occasion: An unscheduled absence immediately before or after a regularly scheduled day off (e.g. weekend or holiday).

Exceptions

The following Absences will *not* be counted as an Occasion:

- ☐ Approved Vacation time
- ☐ Personal Leave time
- ☐ Approved Compensatory Time
- ☐ Bereavement Leave (advance notification to your supervisor is required, when possible)
- ☐ Jury duty/Subpoenaed court appearances (court provided document and advance notification to your supervisor is required)
- ☐ Military leave
- ☐ Workers' Compensation time
- ☐ Scheduled and approved Sick time (i.e. surgery, scheduled doctors' appointments)
- ☐ Designated and documented leave under the federal Family Medical Leave Act (FMLA)

Unscheduled

The employee has provided less than one day notice to the direct supervisor.

Unauthorized

The employee's absence has not been approved by the direct supervisor or reported according to the established procedure.

Guidelines for Reviewing Occasions of Absence

Supervisors and Human Resources will monitor Occasions of Absence. Human Resources will determine the action to be taken upon the accumulation of a certain number of Occasions within a given time period, taking into consideration the following:

1. The number of days taken;
2. The number of Occasions;
3. The pattern of Absences;
4. The employee's past record; and
5. The reasons for the Occasions.

Although the specific action taken in each instance will be determined by Human Resources at its discretion, the chart below illustrates the actions likely to be taken upon the accumulation of a certain number of Occasions within a given time period.

Number of Occasions	Within This Time Period	Action Likely To Be Taken
3	3 months	Your attendance record will be reviewed with you to determine contributing problems and possible solutions. This will be considered an informal counseling session.
5	6 months	Your attendance record will be reviewed with you to determine contributing problems and possible solutions. This counseling session will be recorded in a written memo, a copy of which will be maintained in your supervisor's administrative file.
9	12 months	Your attendance record will be reviewed with you to determine contributing problems and possible solutions. The discussion will be documented and a copy will be maintained in your personnel file. An Unsatisfactory performance evaluation will be given to you for unsatisfactory attendance and dependability unless you give your supervisor documentation explaining the Occasions to his/her satisfaction. You will also be notified that receiving two Unsatisfactory performance evaluations in a row (for poor attendance or any other reason) is just or "due and sufficient cause"

Procedures

1. Pre-schedule All Vacation Time Use. Vacation leave and use of compensatory time must be requested as far in advance as possible and is subject to the operating needs of the Town and department.
2. Pre-schedule All Absences. When possible, you should schedule all Absences (including late arrivals and early departures) in advance with your supervisor. Prescheduled and approved use of certain types of leave, such as a vacation, a doctor's visit or a funeral, will not be counted as an Occasion of Absence.
3. Unscheduled Absences. If it is not possible to pre-schedule an Absence (including a late arrival or early departure), you must:
 - Notify your supervisor not less than one (1) hour prior to your start time, except in emergencies;
 - Give the reason for your Absence;
 - Give an estimate of the anticipated length of the Absence;
 - If the Absence is continuous or extended, notify your supervisor on a daily basis, or as otherwise required by your supervisor.

For each Unscheduled Absence you will be charged with an Occasion of Absence unless the Absence is exempted from the definition of "Occasion."

If you do not notify your supervisor or designee not less than one-hour of the start of the work day, and are unable to provide a reasonable explanation, you will be charged with an Occasion of Absence and you will be charged with unauthorized leave from your scheduled start time until the time you called in.

If you do not contact your supervisor at all to notify him/her that you will be absent for the day (a.k.a. "no call, no show"), you will be charged with an Occasion of Absence and with an unauthorized leave for the day. Progressive discipline may be initiated for repeat offenses. Five (5) or more consecutive days of unauthorized leave is grounds for discipline, up to and including dismissal.

4. Exhaustion of Sick Leave Accruals. If you are absent because of illness or injury but have exhausted your sick leave accruals, you must:

- For each Absence, have your attending physician complete a Medical Certificate explaining the reason for your Absence, and submit the completed form to Human Resources.
- If you wish to use other accrued leave in place of your exhausted sick leave, you must make such request in writing and submit it to your supervisor with the completed Medical Certificate form.

If you fail to follow this procedure, you will be charged with an Occasion of Absence and with unauthorized leave for the day.

If you have exhausted all other accrued leave time in addition to your sick leave time, you will be charged with unauthorized leave for the day and may be subject to disciplinary penalties.

5. Extended Leaves. If you will be absent for an extended period of time because you are sick or injured, you must:

- Obtain a Medical Certificate Form from Human Resources;
- Have the form completed by the treating physician stating the reason for the Absence and your return to work date; and
- Return the form to Human Resources at the time you return to work.

An “extended period of time” is generally five (5) or more days. However, you should refer to your collective bargaining agreement or *Employees’ Guide* to determine exactly when the requirements regarding Medical Certificate Forms begin.

Tardiness

Tardiness will be monitored and reviewed in the context of an employee's overall dependability, which includes all Occasions of Absence.

Definitions

For the purposes of this Procedure, the following definitions will apply:

- A. Tardiness: Any failure to report to work on time according to the established work schedule or lateness for work at any point during the employee’s work shift.

Note: An occasion of tardiness of less than eight (8) minutes will not be charged to paid leave or deducted from the employee's pay but will be considered an occasion of tardiness. For non-exempt employees, an instance of tardiness that equals or exceeds eight (8) minutes will be deducted from an employee's pay in accordance with the Fair Labor Standards Act (FLSA) (to the nearest 15 minutes).

- B. Occasional Tardiness: Two (2) or fewer occasions of tardiness within a six (6) month period.

- C. Excused Tardiness: Occasions of tardiness due to inclement weather, delays in mass transit or other extenuating circumstances will not be counted when an investigation supports the reason for the tardiness. It is the responsibility of the immediate supervisor in consultation with Human Resources to determine if weather and/or road conditions warrant late arrivals on days which are not employer-wide declared late openings.

Supervisor Responsibility

The supervisor must obtain and document the reason for each occasion of tardiness.

Unexcused Tardiness

Step 1: At the first occasion of unexcused tardiness, the supervisor will informally counsel the employee and remind him or her of the employer's procedure governing attendance including the employee's responsibility to report to work on time. Additional reviews of tardiness must be completed every six (6) months.

Step 2: At the second occasion of unexcused tardiness within a six (6) month period, the employee will receive formal counseling. The counseling session must be documented in a memo from the supervisor to the employee indicating that further occasions of tardiness could result in disciplinary action.

Step 3: At the third occasion of unexcused tardiness within a six (6) month period, the employee may be issued a verbal reprimand for repeated tardiness. The verbal reprimand serves as notice that the employee's attendance problem requires immediate attention and improvement and that failure to do so will result in further progressive discipline.

Step 4: At the fourth occasion of unexcused tardiness, if within six (6) months of the third occasion, the employee may receive a letter of written reprimand for just cause in accordance with this Procedure.

Step 5: At the fifth occasion of unexcused tardiness, if within six (6) months of the fourth occasion, the employee may receive a one (1) day level suspension.

Step 6: At the sixth occasion of unexcused tardiness, if within six (6) months of the fifth occasion, the employee may receive a five (5) day level suspension. The employee must be advised that any further occasions of tardiness, if occurring within six (6) months of the sixth occasion, may result in dismissal from the employer.

Step 7: At the seventh unexcused occasion of tardiness, if within six (6) months of the sixth occasion, the employee may be dismissed.

Performance Improvement

An employee who has previously been disciplined for poor attendance and continues without further discipline for six (6) months will be disciplined at the same level as previously disciplined. For each consecutive six (6) month period of time that the employee remains discipline free for poor attendance, the level of discipline will decrease one (1) level.

An employee who has previously been disciplined for tardiness and continues without further incident for six (6) months, if tardy again, will be disciplined at the same level as previously

disciplined. For each consecutive six (6) month period of time that the employee is not tardy, the level of discipline will decrease one (1) level.

The duration of time an employee is on workers' compensation or leave of absence will not be included in the six (6) month period referred to in this Procedure. These guidelines do not limit the employer's right to take disciplinary action against an employee who may not fit into the guideline periods but does demonstrate a continuing pattern of poor attendance or tardiness over a longer period of time.

Communicating Inability to Report to Work

An employee who communicates an inability to report for work after the shift begins and after the time required by this Procedure will not be paid for the time between the beginning of the shift and the time of contact with the supervisor. Such calls will also be handled as tardy, and the period between the beginning of the shift and the time of contact may be charged as unauthorized leave. Any employee who fails to call, without reasonable cause, will be charged with an unauthorized leave of absence. An employee who, in the first instance, does not communicate an inability to report and who does not report will not be paid and will be cautioned regarding future occasions. The next subsequent occasion, if within 12 months, may result in the employee not being paid and suspension on a day-for-day basis. The next occasion, if within 12 months of the last, may result in a five (5) day suspension. The next occasion, if within 12 months of the last, may result in dismissal. Five (5) or more consecutive days of unauthorized leave is grounds for discipline, up to and including dismissal.

Exhaustion of Leave Accrual

All employees are responsible for monitoring their own leave balances. If an employee is unable to report for work and has exhausted his or her leave balance, he or she will generally be charged with an unauthorized leave without pay. In addition, the employee may be subject to disciplinary action as follows:

- A. First Occasion: The employee will be charged with unauthorized leave and informally counseled regarding poor attendance.
- B. Second Occasion: The employee will be formally counseled if the second occasion is within six (6) months of the prior occasion. Otherwise, the employee will again be informally counseled.
- C. Third Occasion: The employee will receive a verbal reprimand if the third occasion is within six (6) months of the prior occasion. Otherwise the employee will again be formally counseled.
- D. Subsequent Occasions: Progressive discipline will be imposed beginning with a letter of written reprimand.

Probationary Period

Employees may be dismissed for any combination of absences or instances of tardiness in the first sixteen (16) weeks of the employee's continuous employment or any extended initial probationary period. If an employee fails to report for duty and fails to notify his/her supervisor during the sixteen (16) weeks of continuous employment or extended initial probationary period he/she will be discharged.

EXHIBIT 7

EMPLOYEE DISCIPLINE PROCEDURE

General Statement

The Town will administer discipline in a fair and consistent manner.

Supervisor Responsibilities

Each supervisor is responsible for maintaining proper working conditions and employee performance within that supervisor's building, program, or department. Discipline will be used only to correct problems, maintain order, and/or deter negative behavior. Disciplinary problems must be dealt with promptly when they arise or become known to the employer. Discipline will be administered on the basis of substantiated facts. Any disciplinary action taken must be related to the offense and the employee's work record. Supervisors must ensure that a written record of the incident is maintained. Prior to the imposition of discipline, an investigation and pre-disciplinary conference for a non-probationary employee must be conducted. Disciplinary action taken must be consistent with this procedure and any applicable federal or state law, collective bargaining agreement, or Town policy.

Pre-Disciplinary Resolution

Informal discussions, counseling, and coaching will be used whenever practicable. Additional training may be considered if it appears the employee could benefit and performance is likely to improve. However, formal disciplinary action should be taken when it is determined further training and counseling would not be effective or the incident is of such magnitude that formal discipline is required.

Records of coaching and counseling may be maintained by supervisors for evaluation purposes. Coaching and counseling records will not be placed in employee personnel files.

Penalties

In accordance with the principles of progressive discipline, the steps may include:

Verbal Reprimand

A verbal reprimand is an oral statement made to the employee; it is not put in writing unless such a request is specifically made by the employee. The fact that it was given to the employee, however, should be recorded and kept in the supervisor's file, allowing the supervisor to recall it if later progressive discipline is necessary. The purpose of a reprimand is to correct the specific act or omission that is the subject of the reprimand and to place the employee on notice that continued misconduct may result in more severe discipline.

Written Reprimand

A written reprimand is formally documented in writing to the employee and placed in the employee's personnel file. The employee will sign a statement acknowledging the receipt of the reprimand. This step may be warranted for a first offense which is a more serious breach of rules or following the issuance of a verbal reprimand. The purpose of a reprimand is to correct the specific act or omission that is the subject of the reprimand and to place the employee on notice that continued misconduct may result in more severe discipline.

Suspension

A suspension may be imposed for serious breaches of written rules and/or employer expectations for reasons which may include, but are not restricted to, misconduct, insubordination, or neglect of duty. A suspension may be warranted for a first offense which is a serious breach of rules or expectations or following the issuance of a written reprimand.

Demotion

A demotion may be considered when an employee, based on inefficiency, incompetence or misconduct, could not carry out the duties and responsibilities of the assigned position yet may demonstrate satisfactory performance in a less demanding assignment.

Dismissal

Dismissal is the most severe penalty in the employee disciplinary process. It is reserved for situations when an employee has (1) repeatedly demonstrated an inability or unwillingness to follow Town policies, procedures or orders, (2) when other forms of disciplinary action have been exhausted, (3) for first offenses which threaten the security or integrity of the building, program, or department, or (4) for conduct of such a serious nature that dismissal is warranted, including, but not limited to those offenses outlined in this procedure.

Disciplinary Factors

The Town Administrator or designee, in determining what disciplinary action to take, will consider the following:

- Whether the employee had forewarning and foreknowledge possible or probable disciplinary consequences of the employee's conduct;
- Any mitigating or aggravating circumstances surrounding the offense;
- The effect of the offense on the Town's efficient operation;
- The employee's past work record including disciplinary history;
- The seriousness or type of offense relative to the employee's duties and responsibilities within the organization including the possible impact on other employees;
- The timeliness of the disciplinary action, and
- The uniformity of enforcement.

Examples of Cause for Disciplinary Action

The Town's employee conduct procedure lists examples of cause for discipline. This is not an exclusive list.

Offenses Which May Result In Reprimand

The following offenses may result in a reprimand for the first offense:

- Failure to observe Town policies or procedures resulting in no adverse consequences.
- Failure to report an incident.
- Unsatisfactory job performance that has not been corrected through informal means.
- Verbal altercation with another employee.

Offenses That May Result In Suspension

The following offenses may result in a suspension without pay for the first offense or repeated lesser offenses:

- Carelessness resulting in loss or destruction of Town property.
- Failure to follow Town policies or procedures resulting in adverse consequences.
- Fraudulent use of sick time.
- Leaving work without proper notice or authorization.
- Sleeping while on duty.
- Unsatisfactory job performance that has not been corrected by lesser discipline.
- Use of physical force.

Offenses That May Result In Involuntary Demotion

The following offenses may result in an involuntary demotion:

- Failure to maintain proficient job performance as a result of inefficiency or incompetence.
- Failure to successfully complete a promotional probationary period.

Offenses That May Result in Dismissal

The following are examples of offenses or repeated lesser offenses that may result in dismissal:

- Absence without leave for five (5) or more working days or failure to return to work within five (5) working days following authorized leave.
- Consistent and persistent activity out of harmony with Town policy.
- Two (2) consecutive unsatisfactory performance evaluations or continuing unsatisfactory job performance after previous discipline and continued failure to improve.
- Conviction of a felony, gross misdemeanor, or misdemeanor that renders the employee unfit or unavailable for work.
- Falsification of official records or documents.

- Fraud or collusion in connection with any appointment in Town service.
- Insubordination including failure to comply with a supervisor's instruction or repeated refusal to perform assigned duties and responsibilities.
- Lying or providing false information regarding an incident.
- Neglect or non-performance of duty including failure to exercise due diligence in the performance of one's official duties and responsibilities.
- Off-duty misconduct that renders an employee unsuitable or unavailable to perform the job.
- Offensive or abusive conduct toward co-workers or the public.
- Possession of, use of and/or intoxication from alcohol or illegal drugs while on Town property or at Town sponsored events.
- Serious misconduct.
- Serious public moral misconduct.
- Theft or unauthorized possession, neglect or misuse of any Town funds, property, equipment, material or supplies.
- Unreasonable use of physical force against an employee.
- Violation of the Town's Anti-Harassment Policy.

Off-Duty employee Misconduct

An employee may be disciplined for off-duty misconduct when the conduct affects the employer-employee relationship. Discipline may occur when such conduct affects the employee's ability to perform the job or when the Town is harmed as a result of the off-duty conduct. The Town will investigate such circumstances and the outcome will be independent of a finding by a criminal court.

Employee Responsibility

Each employee is subject to the Town's Employee Conduct standards. This procedure requires employees to act with integrity and in a professional manner.

Standards for Disciplinary Proceedings

Disciplinary action involving regular employees will be taken in accordance with Town policies and procedures, and the collective bargaining agreement. Further, all disciplinary action will be undertaken in accordance with the following principles:

- Fair Application of Rules: The Town will apply its policies and procedure fairly and without discrimination to all employees.
- Fair Notice: The Town will provide the employee with information concerning probable or possible disciplinary consequences for the employee's conduct.
- Investigation: The Town, before disciplining an employee, will conduct an appropriate investigation to determine whether the employee committed an offense as defined in this procedure.

- Just Penalty: The degree of discipline imposed will be related to the seriousness of the employee's offense and its impact upon the orderly, efficient and safe operation of the Town.
- Reasonable Work Rules: The Town's policies and procedures will be reasonably related to the orderly, efficient and safe operation of the Town's business.
- Sufficient Evidence: The decision to initiate the disciplinary action will be based upon substantial proof of employee act(s) or omission(s).

Review of Discipline

The Director of Human Resources will conduct a review of the proposed discipline to determine if just cause or due and sufficient cause, as appropriate, exists for disciplinary action. This determination will consider the following "just cause" standard:

- (1) Did the employer give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
- (2) Did the employer, before disciplining the employee, investigate to determine whether the employee did in fact violate or disobey a rule or order of management?
- (3) During the investigation, did the employer obtain substantial evidence that the employee is guilty as charged?
- (4) Has the employer applied its rules, orders, and penalties evenhandedly and without discrimination to all employees?
- (5) Was the degree of discipline administered by the employer in a particular case reasonably related to: (1) the seriousness of the employee's proven offense; (2) the employee's record of service with the employer; and (3) the general discipline standards applied by the ?
- (6) Was the Town's investigation conducted fairly and impartially?
- (7) Was the Town's managerial order reasonably related to the orderly, efficient, and safe operation of the employer?

Suspension with Pay

The Town Administrator or designee may suspend a professional employee with pay: (1) during an investigation into allegations of disobedience or misconduct whenever the employee's continued presence in his or her position would not be in the Town's best interests, (2) as a disciplinary measure for misconduct that is detrimental to the Town as defined above, or (3) pending a Town hearing to suspend an employee without pay.

Investigation

Before a non-probationary support staff employee is disciplined by suspension with or without pay or by dismissal, management will conduct an investigation of the problem to determine the facts. A supervisor not directly involved in the incident or an outside investigator will be assigned to conduct the investigation. The investigator will interview the involved employee and witnesses, review all documents and evidence, and may prepare a written summary. The investigator will review the charges and allegations and render a finding as to whether such charges were substantiated, not substantiated, or could not be substantiated. The investigator will

not recommend specific penalties or a level of discipline, but will gather all pertinent information to allow the Town administration to determine the most appropriate disciplinary sanction. Investigations will be in accordance with this procedure.

Right to a Pre-Disciplinary Conference

Upon completion of the investigation, and prior to the imposition of any discipline, the employee will be given the opportunity for a pre-disciplinary conference. At the pre-disciplinary conference, the employee will be advised of the results of the investigation, the proposed disciplinary action, and be given an opportunity to respond orally to the results of the investigation and the proposed disciplinary action. The employee may have a representative in attendance at this meeting.

Representation

An employee who receives notice of a pre-disciplinary conference may choose to have representation. Under the collective bargaining agreement, the employee must be notified of the employee's right to have representation. The employee may choose the union representative but cannot insist upon a specific representative who may not be available through no fault of the employer. The employee will be permitted time before the conference to consult with the employee's representative. If a bargaining unit employee wishes to utilize a representative outside of the union, the employee must obtain a waiver of union representation from the union in accordance with the collective bargaining agreement.

Employee Representative Functions

The representative may reasonably assist the employee during the conference. However, a representative cannot attempt to transform the conference into an adversarial proceeding through unduly provocative questions or by the tone or manner of the representative's conduct. The employer has no duty to bargain with a representative.

Grounds for Discipline

Following the pre-disciplinary conference, and assuming the imposition of discipline, the specific grounds for a written reprimand, demotion, suspension or dismissal will be given in writing to non-probationary support staff employee with a copy to the Union, unless otherwise required by law.

The specific grounds for an oral reprimand or other discipline will be given to the employee in writing within a reasonable time after the request of the employee for such grounds, with a copy to the Union, unless otherwise required by law.

Rights Preceding Discipline/Compulsion of Testimony

Demotion, discipline, or other involuntary change in the employment status of any bargaining unit employee will be preceded by: 1) the honoring of all employees' rights included in the

collective bargaining agreement and applicable statutes; 2) a conference held with the employee by the appropriate supervisor prior to taking action; and 3) a written explanation for the action given to the employee.

Whenever the Town engages in an administrative investigation of any alleged breach of conduct by a member of the Union, the individual member must cooperate with the administration, but will not be required to take a lie detector test.

Termination during Probationary Period

Probationary employees may be terminated at any time during their probationary period with or without justification. In such instances, the Town Administrator or designee will give notice of the employee's termination. Notice may be given by either: (1) personally serving the notice on the probationary employee, or (2) by mailing notice by certified mail, return receipt requested, to the home address of the probationary employee. Service by mail is complete upon mailing. The Director of Human Resources will be copied on the termination notice. Employees terminated during a probationary period will have no right to appeal except as provided by State law.

Completion of Probationary Period

Reports regarding completion of the probation period must be received in the Human Resources Department prior to the employee's last day of probation. An employee who has not been notified by the supervisor or designee of termination prior to the end of his or her last day of probation will gain regular status.

EXHIBIT 8

ADMINISTRATIVE ROLES IN HANDLING DISCIPLINE

Purpose

The purpose of this procedure is to clarify the administrative roles and level of responsibility relative to handling discipline.

Supervisors

- Complete and authorize non-disciplinary actions, e.g. informal and formal counseling that are not included in personnel file.
- Consult with appropriate Town level supervisor (e.g. Town Administrator), and Director of Human Resources regarding all potential investigations that may lead to discipline or criminal charges.
- Recommend to appropriate Town level supervisor and Director of Human Resources any proposed paid leaves of absence pending investigation.
- Conduct assigned investigations.
- Inform appropriate Town level supervisor and Director of Human Resources of the results of results of investigations (i.e. were charges substantiated, not substantiated, could not be substantiated).
- Do not recommend level of discipline.

Director of Human Resources

- Assist supervisors with disciplinary letters, professional development plans, as needed.
- Confer with Town Administrator regarding any investigations that may result in serious discipline of employee (e.g. suspension, demotion, dismissal) or criminal charges.
- Authorize paid leaves of absence pending investigation as deemed appropriate.
- Authorize discipline including verbal or written reprimand, 1 and 5 day level suspensions, etc. in consultation with the Town Administrator.
- Recommend dismissal to the Town Administrator as deemed appropriate.
- Prepare any paperwork as required by Town Administrator.

Town Administrator

- Endorse any proposed dismissal or other appropriate corrective action to the Board for approval.
- Receive notification of proposed action that may result in serious discipline (suspension, demotion, and discharge) or criminal charges from Director of Human Resources or other appropriate supervisor.
- Receive notification of paid leaves of absence pending investigation from Director of Human Resources or other appropriate supervisor.

- Review any recommended dismissal for approval.
- Receive notification of any investigation, either administrative or criminal, that may result in serious discipline or criminal prosecution.
- Receive notification of legal action taken by any employee in response to imposed discipline, claim of discrimination, etc.
- Notify and/or consult with First Selectman and Board of Selectman regarding serious discipline as appropriate.

Union Locals

- Receive notification of any discipline related to collective bargaining unit employees.
- Represent employees in disciplinary procedure and throughout the grievance and arbitration procedure process.
- Refer to CBA, Board policies, and Town and department procedures for further guidance.

Employees

- Responsible as a mandatory reporter for certain offenses (e.g., sexual harassment).
- Responsible for carrying out all job responsibilities and a satisfactory/proficient manner.

ABOUT THE AUTHOR

W. Lee Palmer, Jr.
Director of Human Resources
Town of Darien

Education:

Certificate of Achievement-Northern Illinois University
MPA-University of Connecticut
BA-Syracuse University, Maxwell School of Citizenship
Valedictorian Monson Academy

Licenses:

Chief School Business Official
School Business Administrator

Passion:

Helping value-centered organizations become more effective and efficient in an increasingly complex global society.

Background:

Lee has extensive experience in all phases of administration in large public agencies, town government, school districts, university settings, non-for-profit organizations, and the private sector. He is currently employed as the Director of Human Resources for the Town of Darien. Previously he served as the Chief of Human Resources for Norwalk Public Schools and Executive Director of Human Resources and IT for the Round Lake Area Schools Town 116. His prior experience includes work as a management consultant in the Chicago and Minneapolis/St Paul areas, serving as the Director of Human Resources for Minnesota's largest intermediate school district, Deputy Commissioner for the CT Department of Correction, the state's largest agency, Senior Executive Service Manager, Director of Administration and Director of Human Resources for several major state agencies and Interim Director of Finance for a large municipality. Lee has also served on the Board of Directors and as Human Resources Chair for a multi-community not-for-profit organization.

Lee has a proven track record in human resources administration, labor/employee relations and serving as Chief Negotiator, organization development, strategic and workforce planning, training and development, recruitment and retention, wage and salary administration, job classification and objective job evaluation and pay equity systems, benefits, employee safety and health and wellness programs. Areas of expertise include Title VII of the Civil Rights Act, ADA, ADEA, FMLA, FLSA, Equal Pay Act, Pregnancy Discrimination Act, workers' compensation, OSHA, and AA/EOE provisions and affirmative action plan development. Most recently he served on the Executive Board for the Minnesota PELRA Chapter

Lee also has a strong background in financial management including budgeting, purchasing, payroll systems, asset management including facilities and maintenance, grants administration and information technology.

Lee has authored employee handbooks including *A Supervisor's Guide to Proactive Labor Relations in the Public Sector* and *A Supervisor's Guide to Effective Performance Evaluations*. He is a Past President and former Executive Board Member for the Connecticut Public Employer Labor Relations Association and former Chair of the Human Resources Group for the Connecticut Quality Council.

During his tenure with those organizations, Lee developed an Employer Labor Relations Program series for supervisors, and human resources practitioners leading to a Connecticut Public Employer Labor Relations Association and the CQC Certificate of Completion, and taught two of the supervisor modules. He is also a former Executive board member for the Minnesota PELRA organization.

